

AMENDED IN SENATE AUGUST 21, 2006

AMENDED IN ASSEMBLY APRIL 20, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2282

Introduced by Assembly Member Oropeza

February 22, 2006

An act to amend Section 650 of the Business and Professions Code, and to amend Section 14107.2 of the Welfare and Institutions Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2282, as amended, Oropeza. Federally-qualified health centers.

Existing law, with certain exceptions, prohibits the offer, delivery, receipt, or acceptance by any healing arts licensee regulated by the Business and Professions Code or under the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, as compensation or an inducement for referring patients, clients, or customers to any person. A violation of this provision is a crime.

This bill would provide that the offer, delivery, receipt, or acceptance of any consideration between a federally-qualified health center, as defined, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof to the health center is ~~not unlawful~~ *permitted only* if the transaction ~~otherwise~~ is consistent with a specified federal law ~~and meets certain requirements, including contributing to the ability of the health center to maintain or increase the availability or enhance the quality of services provided to a medically underserved population.~~

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons receive health care benefits.

Existing law provides that any person who solicits or receives any remuneration in return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service, or merchandise for which payment may be made under the Medi-Cal program, or in return for the purchasing, leasing, ordering, or arranging for, or recommending the purchasing, leasing, or ordering of any goods, facility, service, or merchandise for which payment may be made under that program, is guilty of a crime, except as specified. Existing law further provides that any person who offers or pays any remuneration to refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which payment may be made under the Medi-Cal program, or to purchase, lease, order, or arrange for or recommend the purchasing, leasing, or ordering of any goods, facility, service, or merchandise for which payment may be made under that program, is guilty of crime, except as specified.

~~This bill would exempt from the above criminal provisions, the offer, delivery, receipt, or acceptance of any consideration between a federally-qualified health center, as defined, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to the health center entity pursuant to an agreement if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, and if the transaction otherwise meets the requirements of specified provisions of federal law practices, or transactions between a federally qualified health center, as defined, and any individual or entity only to the extent sanctioned or permitted by federal law.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 650 of the Business and Professions
- 2 Code is amended to read:

650. Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful.

The payment or receipt of consideration for services other than the referral of patients which is based on a percentage of gross revenue or similar type of contractual arrangement shall not be unlawful if the consideration is commensurate with the value of the services furnished or with the fair rental value of any premises or equipment leased or provided by the recipient to the payer.

The offer, delivery, receipt, or acceptance of any consideration between a federally-qualified health center, as defined in Section 1396d(l)(2)(B) of Title 42 of the United States Code, and any individual or entity providing goods, items, services, donations, loans, or a combination thereof, to the health center entity pursuant to a contract, lease, grant, loan, or other agreement, if that agreement contributes to the ability of the health center entity to maintain or increase the availability, or enhance the quality, of services provided to a medically underserved population served by the health center, shall ~~not be unlawful if the transaction otherwise meets the requirements of the safe harbor from the federal antikickback statute in Section 1320a-7b(b)(3) of Title 42 of the United States Code and regulations adopted thereunder.~~ *be permitted only to the extent sanctioned or permitted by federal law.*

Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code and in Sections 654.1 and 654.2, it shall not be unlawful for any person licensed under this division to refer a person to any laboratory, pharmacy, clinic (including entities exempt from licensure pursuant to Section 1206 of the Health and Safety Code), or health care facility solely because the licensee has a proprietary

1 interest or coownership in the laboratory, pharmacy, clinic, or
2 health care facility; provided, however, that the licensee's return
3 on investment for that proprietary interest or coownership shall
4 be based upon the amount of the capital investment or
5 proportional ownership of the licensee which ownership interest
6 is not based on the number or value of any patients referred. Any
7 referral excepted under this section shall be unlawful if the
8 prosecutor proves that there was no valid medical need for the
9 referral.

10 "Health care facility" means a general acute care hospital,
11 acute psychiatric hospital, skilled nursing facility, intermediate
12 care facility, and any other health facility licensed by the State
13 Department of Health Services under Chapter 2 (commencing
14 with Section 1250) of Division 2 of the Health and Safety Code.

15 A violation of this section is a public offense and is punishable
16 upon a first conviction by imprisonment in the county jail for not
17 more than one year, or by imprisonment in the state prison, or by
18 a fine not exceeding fifty thousand dollars (\$50,000), or by both
19 that imprisonment and fine. A second or subsequent conviction is
20 punishable by imprisonment in the state prison or by
21 imprisonment in the state prison and a fine of fifty thousand
22 dollars (\$50,000).

23 SEC. 2. Section 14107.2 of the Welfare and Institutions Code
24 is amended to read:

25 14107.2. (a) Any person who solicits or receives any
26 remuneration, including, but not restricted to, any kickback,
27 bribe, or rebate, directly or indirectly, overtly or covertly, in cash
28 or in valuable consideration of any kind either:

29 (1) In return for the referral, or promised referral, of any
30 individual to a person for the furnishing or arranging for the
31 furnishing of any service or merchandise for which payment
32 may be made in whole or in part under this chapter or Chapter
33 8 (commencing with Section 14200); or

34 (2) In return for the purchasing, leasing, ordering, or
35 arranging for or recommending the purchasing, leasing, or
36 ordering of any goods, facility, service or merchandise for
37 which payment may be made, in whole or in part, under this
38 chapter or Chapter 8 (commencing with Section 14200) of this
39 part,

1 is punishable upon a first conviction by imprisonment in the
2 county jail for not longer than one year or state prison, or by a
3 fine not exceeding ten thousand dollars (\$10,000), or by both
4 the imprisonment and fine. A second or subsequent conviction
5 shall be punishable by imprisonment in the state prison.

6 (b) Any person who offers or pays any remuneration,
7 including, but not restricted to, any kickback, bribe, or rebate,
8 directly or indirectly, overtly or covertly, in cash or in valuable
9 consideration of any kind either:

10 (1) To refer any individual to a person for the furnishing or
11 arranging for furnishing of any service or merchandise for
12 which payment may be made, in whole or in part, under this
13 chapter or Chapter 8 (commencing with Section 14200); or

14 (2) To purchase, lease, order, or arrange for or recommend
15 the purchasing, leasing, or ordering of any goods, facility,
16 service, or merchandise for which payment may be made in
17 whole or in part under this chapter or Chapter 8 (commencing
18 with Section 14200),

19 is punishable upon a first conviction by imprisonment in the
20 county jail for not longer than one year or state prison, or by a
21 fine not exceeding ten thousand dollars (\$10,000), or by both
22 the imprisonment and fine. A second or subsequent conviction
23 shall be punishable by imprisonment in the state prison.

24 (c) Subdivisions (a) and (b) shall not apply to the following:

25 (1) Any amount paid by an employer to an employee, who has
26 a bona fide employment relationship with that employer, for
27 employment with provision of covered items or services.

28 (2) A discount or other reduction in price obtained by a
29 provider of services or other entity under this chapter or Chapter
30 8 (commencing with Section 14200), if the reduction in price is
31 properly disclosed and reflected in the costs claimed or charges
32 made by the provider or entity under this chapter or Chapter 8
33 (commencing with Section 14200). This paragraph shall not
34 apply to consultant pharmaceutical services rendered to nursing
35 facilities nor to all categories of intermediate care facilities for
36 the developmentally disabled.

37 ~~(3) The offer, delivery, receipt, or acceptance of any~~
38 ~~consideration between a federally-qualified health center, as~~
39 ~~defined in Section 1396d(f)(2)(B) of Title 42 of the United States~~
40 ~~Code, and any individual or entity providing goods, items,~~

1 ~~services, donations, loans, or a combination thereof, to the health~~
2 ~~center entity pursuant to a contract, lease, grant, loan, or other~~
3 ~~agreement, if that agreement contributes to the ability of the~~
4 ~~health center entity to maintain or increase the availability, or~~
5 ~~enhance the quality, of services provided to a medically~~
6 ~~underserved population served by the health center, and if the~~
7 ~~transaction otherwise meets the requirements of Section~~
8 ~~1320a-7b(b)(3) of Title 42 of the United States Code and the~~
9 ~~regulations adopted thereunder.~~

10 *(3) The practices or transactions between a federally-qualified*
11 *health center, as defined in Section 1396d(1)(2)(B) of Title 42 of*
12 *the United States Code, and any individual or entity shall be*
13 *permitted only to the extent sanctioned or permitted by federal*
14 *law.*

15 (d) For purposes of this section “kickback” means a rebate or
16 anything of value or advantage, present or prospective, or any
17 promise or undertaking to give any such rebate or thing of value
18 or advantage, with a corrupt intent to unlawfully influence the
19 person to whom it is given in actions undertaken by that person
20 in his or her public, professional, or official capacity.

21 (e) The enforcement remedies provided under this section are
22 not exclusive and shall not preclude the use of any other criminal
23 or civil remedy.

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26 CORRECTIONS:

27 Text—Pages 2, 4, and 5.
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